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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES,

12 Plaintiff,

13 vs.

14 KIMBERLY A. MILETTA

15 Defendant.

Case No. CR-22-195-MEMF

REPLY TO GOVERNMENT'S  
OPPOSITION TO MOTION TO  
DISMISS; EXHIBIT "A"

Date: Feb. 8, 2024

Time: 10:00 AM

16  
17 Comes now defendant Kimberly A. Miletta, together with counsel, and replies  
18 below to the government's opposition to the defense motion to dismiss the indictment  
19 [Docket #54].  
20

21 Dated 1-24-24

/s./ H. Dean Steward  
H. Dean Steward  
Counsel for Defendant  
Kimbrely A. Miletta

## I. Introduction

Much of the government's opposition merely parrots the unproven allegations in the indictment. The opposition goes further, crediting the conclusions, suppositions and guesses of both the complaining witness, (Opperman), and her attorney, (Umhofer).

For example, the government sets out the following:

"An attorney for the victims, Matthew Umhofer, contacted the government with a request to obtain copies of property that the government located and seized from defendant's residence during the execution of the search warrants. But that in fact belonged to the victims, and not the defendant."

Government opposition, p. 1, ln. 20-24

It is clear that the government relied on the opinions and conclusions of the complaining witness's attorney. They abandoned their duty as prosecutors to seek the truth, in order to accommodate a former Asst. U.S. Attorney<sup>1</sup> from their very own office. "The prosecutor's duty to seek the truth and vindicate the demands of justice distinguishes his role from that of ordinary trial counsel. As the state's representative, the prosecutor may not assume 'the role of an architect of a proceeding that does not

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<sup>1</sup> For example, see Umhofer as government counsel in Los Angeles in *U.S. v. Delaney* 427 F.3d 1224 (9<sup>th</sup> Cir. 2005); *U.S. v. Luong* 470 F.3d 898 (9<sup>th</sup> Cir. 2006).

1 comport with standards of justice.” *Brady v. Maryland*, 373 U.S. 83, 88 (1963).

## 2 **II. Objection by Defendant’s Counsel**

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4 The government claims that counsel for the defendant, “...never raised any  
5 objections” to the civil action seeking documents and data. Government opposition, p.  
6 4, ln. 23-24. This is not accurate. As demonstrated by the government’s Ex. 1, p. 7,  
7 defendant’s attorney on the investigation (as opposed to counsel on the civil motion  
8 filed by Umhofer), did set out an objection, with his comment that it looked like the  
9 government was nothing but an arm of the complaining witness and her counsel.  
10  
11

## 12 **III. Government’s Extreme Conduct**

13 The defense position is that the government followed the lead and urging of  
14 private counsel (Umhofer) to investigate and then indict Ms. Miletta. Usurping the  
15 prosecution’s function is surely extreme and outrageous. *Bischel v. U.S.* 32 F3d 259,  
16 264 (7<sup>th</sup> Cir. 1994), (“The Department of Justice wields enormous power over people’s  
17 lives, much of it beyond effective judicial or political review. With power comes  
18 responsibility, moral if not legal, for its prudent and restrained exercise”); *Sinaloa*  
19 *Lake Owners Ass’n v. City of Simi Valley*, 882 F.2d 1398, 1407–10 (9th Cir.1989), cert.  
20 denied, 494 U.S. 1016 (1990), (“Given the significance of the prosecutor’s charging  
21 and plea-bargaining decisions, it would offend common notions of justice to have them  
22 made on the basis of a dart throw, a coin toss or some other arbitrary or capricious  
23 process.”).  
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1 **IV. Securing the Indictment**

2 *1. Umhofer's Cheerleading-*

3  
4 Of the first four entries on the government's index to discovery in this case, two  
5 include references to Umhofer and his input:  
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7

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8  
9 USAO Bates # 00000022 Report and agent's notes dated 2-26-2019- interview  
10 with Matthew Umhofer

11 USAO Bates# 00000029 Report dated 03-04-2019 and attachments- Interview of  
12 Matthew Umhofer and Cover  
13 sheet re thumb drive  
14

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15  
16 It is clear that attorney Umhofer contacted government counsel<sup>2</sup> repeatedly and the  
17 FBI early and often in the investigation. Surely his goal was to secure the now-pending  
18 indictment and victims' rights relief for his client.  
19

20 *2. "Audit" by Complaining Witness's Lawyer-*

21  
22 Importantly, Umhofer purported to support his claims of embezzlement and  
23 fraud by the defendant with a report/audit prepared at his direction by a private  
24 investigator.<sup>3</sup> Umhofer shared this report with the government, claiming it was further  
25 proof of wrongdoing by Ms. Miletta. This was yet another instance of the pressure and  
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27  
28 <sup>2</sup> Umhofer's name is seen 59 times in the discovery index herein.

<sup>3</sup> The investigator was a former FBI agent in Southern California, one Paul Bonin.

1 coercion put upon the government by Umhofer. Through Umhofer, the government  
2 received-

- 3
- 4
- 5 1. Thumb drive- Investigative materials- Paul Bonin
- 6 2. Paul Bonin an Associates- 4827 Calle Alto Camarillo- Property Query
- 7
- 8 3. Paul Bonin & Associates- Background investigation of Kimberly Miletta Report
- 9 4. Paul Bonin & Associates- Phoenix Books Inc (2)- RE Active account
- 10

11  
12 *U.S. v. Miletta- government discovery index, p. 16-17*

13  
14 Such heavy-handed input to the government was unfair. The outside investigator  
15 created a “road map” for the government, based on slanted and biased views of the  
16 evidence and facts.

## 17 **V. Nexus**

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19 The connection between Umhofer’s actions, the government’s responses and the  
20 defendant are clear. An independent, measured investigation was not possible with  
21 Umhofer’s pressure on the government. Umhofer’s actions were beyond zealous  
22 advocacy and the government’s acquiescence was the nexus required under case law.

## 23 **VI. Conclusion**

24  
25 For more than three years, attorney Matthew Umhofer pursued an indictment  
26 against Ms. Miletta (see attached timeline, Ex. “A”). He began in the Winter of 2019  
27  
28

1 and was rewarded with an indictment in May of 2022. The government's abdication of  
2 the prosecutorial role to seek truth and justice was apparent, and the indictment must  
3 be dismissed.  
4

5 Dated 1-24-24

/s./ H. Dean Steward  
H. Dean Steward  
Counsel for Defendant  
Kimbrelly A. Miletta

1 **CERTIFICATE OF SERVICE**

2  
3  
4 IT IS HEREBY CERTIFIED THAT:

5 I, H. Dean Steward, am a citizen of the United States, and am at least 18 years of age.

6 My business address is 17 Corporate Plaza Drive, Ste. 254 in Newport Beach, CA.  
7

8 I am not a party to the above-entitled action. On 1-24-24, I have caused service  
9 of the defendants:

10 **REPLY TO GOVERNMENT'S OPPOSTION TO MOTION TO DISMISS**

11  
12  
13 on the following parties by email, as it is proposed to be filed under seal, to:

14 AUSA JENNA WILLIAMS AND DECLAN CONROY  
15  
16

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on 1-24-24  
19

20 s./ H. Dean Steward  
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